



500.50 Forfeiture

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POLICY

The Sheriff's Office uses forfeiture provisions to effectively and significantly impact crime while protecting the proprietary interests of innocent owners and lien holders. The potential for obtaining revenues from forfeiture must not override fundamental considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity.

The Florida Contraband Forfeiture Act allows seizure and forfeiture of any controlled or other substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of Florida Statute Chapter 893, if a connection can be clearly demonstrated between the article(s) seized and the narcotics activity.

The Sheriff's Office will ensure that, in all seizures made under the Florida Contraband Forfeiture Act, that deputies adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on a pretext, coercive consent searches, or a search based solely on an individual's race or ethnicity.

PROCEDURE

- A. Forfeiture procedures of the Sheriff's Office are defined and delineated through which the process of civil forfeiture action is initiated. Hendry County Sheriff's Office has standardized the procedures used in seizing, maintaining and forfeiting assets pursuant to the provisions of the Florida Contraband Forfeiture Act, Florida Statute Chapter 932, to ensure that property is subject to forfeiture; that the asset is seized and maintained in an efficient and lawful manner; and to provide for an orderly process for the seizure action in accordance with law.
- B. General
 - 1. Any items (currency or property) with a value of less than \$10,000.00 are not recommended for forfeiture consideration. Any vehicle seized for forfeiture consideration should have a fair market value of at least \$10,000.00 and no lien. Any vehicle not meeting this threshold must have command authority to proceed with forfeiture. The Sheriff's Legal Advisor shall be briefed prior to the seizure of any asset.

2. Any forfeiture action contemplated against **real property** will first be discussed with the Sheriff's Office Legal Advisor.
 3. When personal property is seized for forfeiture consideration, a Criminal Investigations Unit supervisor must review the probable cause affidavit supporting the seizure within five business days.
 4. ***Any prospective seizure of assets without a corresponding criminal arrest will be brought to the attention of the deputy/detective's immediate supervisor and the Legal Advisor before any such action is taken.*** The Chief Deputy must be notified of all seizures within two business days.
 5. Seized property may not be used for any purpose until the rights to, interest in, and title to the seized property are in accordance with the Florida Contraband Forfeiture Act. This does not prohibit the use or operation necessary for reasonable maintenance of seized property. Reasonable efforts will be made to maintain seized property in such a manner as to minimize the loss of value.
 6. All personnel will avoid the appearance of impropriety in the acquisition, sale, retention, or transfer of any forfeited property or proceeds derived from such property.
- C. Basis for Seizure of Property is according to
1. Chapter 932.702, Florida Statutes
 2. Chapter 932.701(2)(a) 1-6, Florida Statutes
- D. Procedures for Seizure of Personal Property
1. Property may not be seized unless there is ***probable cause*** to believe that:
 - a. The item subject to seizure has been used, was attempted, or intended to be used in violation of any provision of the Florida Contraband Forfeiture Act or;
 - b. Any violation of the Florida Contraband Forfeiture Act has taken place or is taking place in, upon, or by means of the seized property, or;
 - c. The item subject to seizure is a "contraband article" as defined in Florida Statute Chapter 932.701, or other provision of the law or the Florida Contraband Forfeiture Act, or;
 - d. The property was used to facilitate the commission of a felony.
 2. Probable cause seizures taking place at the time of Florida Contraband Forfeiture Act (FCFA) violations may be made without prior judicial approval for personal property. Property not seized at the time of the FCFA violations presently located on private premises may be seized only pursuant to a court order authorizing entry onto the private premises, unless otherwise authorized by law.
 3. The seizing deputy/detective will make diligent efforts to determine ownership of the property, including the identification of all registered owner(s), title holder(s), bona fide lien holder(s), or other interested parties.
 4. In cases of vehicle seizure, the deputy/detective will run a lien and status (stolen, etc.) check with teletype and reflect that information on the forfeiture notice 500.50-01. The V.I.N. number is to be accurately and legibly recorded on all appropriate documents.
 5. The seizing deputy/detective ***will inform*** all persons entitled to notice that the property is being seized for forfeiture consideration. "Persons entitled to notice" is defined by Florida Statute Chapter 932.701(e), as "any owner, entity, bona fide lien holder, or person in possession of the property... when seized." An asset

- forfeiture notice 500.50-01 must be personally provided or sent by certified mail within five (5) business days from the date of seizure.
6. Occasionally, property seized for eventual forfeiture will also need to be held for evidence. Any property seized for forfeiture will be handled as provided by Sheriff's Office directives relating to property and evidence control, and vehicle storage and inventory. All receipts, inventory forms and disposition sheets will be marked "Hold for Forfeiture." It is imperative that the deputy/detective make it clear to the Chief Deputy and the Evidence Unit that such property is to be held as *evidence pending potential civil forfeiture*. The designation of an item as evidence **does not** lengthen or eliminate the time during which forfeiture may be sought.
 7. A forfeiture notice 500.50-01 will be completed and submitted to the Chief Deputy along with a copy of all reports, charging affidavits, and an original forfeiture affidavit verified by the immediate supervisor. This must be completed within *three calendar days of the seizure*. When supplemental reports are prepared, copies of these will be forwarded to the Chief Deputy to be placed within the existing forfeiture file.
 8. Where a laboratory analysis is necessary to establish the grounds for forfeiture of property, the seizing deputy/detective will ensure that the substance is properly submitted for delivery to the lab, and will further ensure that a copy of the laboratory result is immediately forwarded to the Legal Advisor.
 9. When cash is taken from a suspect for forfeiture purposes, the deputy/detective will issue the owner a property receipt and asset seizure notice. **If feasible, the money should be counted in the presence of the owner, who should co-sign and receive a copy of the receipt.** Otherwise, the currency must be counted in the presence of another deputy/detective, employee, or other reliable witness who should co-sign the receipt. Cash seized for forfeiture purposes, will be handled in accordance with Procedure 500.40-Evidence Collection and Storage. Within 24 hours of seizure, the case deputy/detective and/or supervisor will make notification to Sheriff's Accounting so that a proper deposit can be made into the Sheriff's forfeiture account. If the currency is of evidentiary value it should be placed and remain in Evidence along with a copy of the property receipt pending final disposition of criminal case.
 10. *Under no circumstances* will any settlement negotiations be conducted at the time of seizure. The Legal Advisor will handle all settlements. Settlement agreements between the Legal Advisor and unrepresented claimants must clearly indicate that the claimant has freely and voluntarily agreed to the settlement without benefit of an attorney.
 11. If the claimant informs the seizing deputy/detective that he/she wants to voluntarily forfeit the items to the Sheriff's Office, the deputy/detective should contact his/her immediate supervisor to receive approval to utilize the forfeiture notice 500.50-01. The claimant will sign the form, the seizing deputy/detective witnesses their signature and the immediate supervisor initials to show approval was obtained. This original form will be forwarded to the Chief Deputy along with copies of all reports, charging affidavits, and an original Forfeiture Affidavit within three days from the date of seizure.
 12. Subpoenas will not be necessary to secure the deputy/detective's presence at any hearings, but on call and appearance time and compensation provisions will be

observed. As much advance notice as possible will be provided to the deputy/detective and Chief Deputy by the Legal Advisor.

13. Storage and Maintenance of Personal Property

a. Vehicle Inventory:

1. A complete inventory of the vehicle and all containers, open or closed, found therein will be completed by the seizing deputy/detective at the time of seizure. Any items of value or items in excess will be removed from the vehicle inventoried, collected, and transported to the Evidence Unit per guidelines in Procedure 500.30.
2. All vehicles seized for forfeiture will be immediately driven to Fleet Maintenance or towed by rotation wrecker and secured in the Sheriff's Office impound yard.
3. The seizing (or assisting) deputy/detective will complete a Vehicle tow Receipt and mark the form "Hold for Forfeiture" in the space designated for "reason for hold." The Property Receipt will be disseminated by the deputy/detective prior to the end of his/her tour of duty to:
 - a. The Fleet Maintenance, *along with the vehicle's keys*;
 - b. The driver or owner (if present)
 - c. Chief Deputy (legible photocopy).
4. Any personal property seized as evidence will be handled in accordance with the enforcement Policy and Procedure "*Evidence Collection/Process/ Storage.*"

b. Maintenance:

1. Reasonable efforts will be made to maintain the property in its time-of-seizure condition.

14. Release of Seized Personal Property

- a. If the lawful owner or other person prevails at the conclusion of the judicial process, the seized property will be released to him/her immediately. In these instances, the Sheriff's Office will not assess any towing or storage fees, administrative or maintenance costs, or similar charges against the owner or other interested party.
- b. In all other instances, if a seized vessel, vehicle, aircraft, etc. is to be released to the lawful owner or other authorized person, the Sheriff's Office may assess the actual costs of towing, storage, and maintenance of the seized property. Absent settlement to the contrary, administrative costs reflecting actual expenses will not be assessed.
- c. It will be the responsibility of the seizing deputy/detective to coordinate with the proper owner for the release of property after being advised to do so by the Legal Advisor.
- d. It will be the responsibility of the Fleet Manager or designee to complete the actual release of the personal property as specified in Procedure 500.40 after the approval of the seizing deputy/detective or unit supervisor. The Fleet Manager or designee shall then notify the Chief Deputy upon the actual release of the personal property.

E. State Forfeiture (Contraband) Special Revenue Fund

1. The Hendry County Commission must approve any funds used from the State Forfeiture Fund.
 2. Seizures
 - a. As cash is received by the Sheriff's Office through either seizures or forfeitures, these funds will be submitted to the Finance Unit and deposited. As funds are awarded, based on Florida Statute 932.7055 they will be turned over to the Board of County Commissioners to be held for use by the Sheriff. The Sheriff's Office must officially request the use of appropriated monies from the Board of County Commissioners, and ensure compliance that funds are used for restricted law enforcement purposes, in accordance with Florida Statute 932.7055.
 - b. Property
 1. With the exception of motor vehicles, recreational vehicles, generators, etc., seized or forfeited property received through local law enforcement activities will be routed to the Evidence Unit of the Sheriff's Office for proper storage. Seized or forfeited property not routed to the Evidence Unit will be stored in the secured/alarmed storage compound at Fleet Maintenance of the Sheriff's office with the approval of the CID Lieutenant. CID will take the necessary steps to maintain the condition of seized or forfeited property at Fleet Maintenance. The Sheriff makes determinations regarding the allocation of seized property. No seized or forfeited property can be maintained at the unit level, without initially being routed through the Evidence Unit and being formally allocated by the Sheriff. If the Sheriff's Office maintains assets, the assets are added to the general fixed assets list.
 3. Return to Defendant
 - a. If the case is closed and the judge finds in favor of the defendant, all seized and/or forfeited property acquired by the Sheriff's Office must be returned, in whole, without interest earnings, to the original claimant.
- F. Federal Asset Sharing Funds
1. When the US Department of Treasury or Department of Justice awards federal cash assets to the Sheriff's Office, all funds are deposited into the applicable Sheriff's Office Federal Asset Sharing Special Revenue Fund. These awarded funds are administered by the Accounting Unit and can be used at the discretion of the Sheriff, in accordance with Federal Equitable Sharing Guidelines.
- G. Use of Forfeited Items
1. State Forfeitures
 - a. All forfeited property retained for law enforcement use will be maintained and used in accordance with the Florida Contraband Forfeiture Act, and will be subject to the same controls with regard to property acquired through the agency's normal appropriations process.
 - b. Currency obtained through settlement, court order, or sale of forfeited property will be for Sheriff's Office use as provided by law.
 - c. Items forfeited by settlement or court order may be converted to the use of the Sheriff's Office or sold at auction. No forfeited item will be used or assigned until forfeiture proceedings are complete pursuant to settlement

or court order. The Sheriff must sign a memorandum for approval of use before any forfeited item can be assigned or used by the Sheriff's Office.

- d. The Legal Advisor will notify the Chief Deputy who will in turn notify the Fleet Manager when a vehicle is awarded to the Sheriff's Office. The Finance Unit will be responsible for obtaining clear title and all supporting documentation to enable the proper disposal of the vehicle. The Sheriff must sign a memorandum for approval of use before any forfeited vehicle is placed in service.

2. Federal Forfeiture

- a. All property acquired through federal forfeiture proceedings will be used in accordance with the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*.

H. Procedures for Seizure of Real Property

1. During any investigation and prior to the execution of any search warrant where non-homestead real estate property may have been used in violation of the Florida Contraband Forfeiture Act the following procedures shall be adhered to:
 - a. The investigator/detective will contact the Hendry County Property Appraisers Office to determine who pays property taxes on the real estate in question and will obtain a printout of that information;
 - b. Obtain any and all mortgage deeds, lien information, and any satisfaction of mortgages concerning the real estate property;
 - c. Contact any lien holder (i.e. Mortgage companies or financial institutions which have a mortgage or lien on the property) and determine the present mortgage amount or lien amount on the property.
2. Because of the uniqueness and special maintenance needs of real property, any contemplation of seizure of such property; will require approval of the Sheriff and coordination with the Legal Advisor.
3. Once probable cause for seizure has been determined, the following factors should be considered in determining whether to seize real property.
 - a. The potential for successful forfeiture action;
 - b. The availability of alternate methods of forfeiture such as joint or adoptive forfeitures with a federal agency;
 - c. The impact of forfeiture on targets of a criminal investigation;
 - d. The impact of forfeiture on innocent owners, lien holders or other persons not involved in criminal activity;
 - e. The impact of forfeiture on the public health, safety and welfare, particularly environmentally sensitive land.
4. Responsibility
 - a. The investigator/detective will:
 1. Provide information to and consult with the legal advisor regarding the investigation, seizure and management of real property under consideration for seizure.
 2. Accomplish necessary forfeiture investigation and research regarding the subject real estate or assist in compiling such information if information is developed by other sources.
 3. Assist the Legal Advisor when requested to complete necessary Sheriff's Office, court related and other paperwork relative to the forfeiture, including a legal description of the property, such as:

- a. An “Affidavit for Seizure Warrant for Real Property.”
 - b. A “Notice of Lis Pendens.”
 - c. A “Seizure Warrant for Real Property.”
 - d. A “Petition for Rule to Show Cause.”
 - e. A “Stipulation for Occupancy and Indemnity.”
4. Effect constructive “seizure” of real estate, service of process and other enforcement duties with respect to the subject real estate.
5. If the residence is occupied and eviction is warranted, then prior to evicting dependent children, medically disabled persons or persons otherwise infirm, the investigator/case detective must notify appropriate social service agencies of the eviction so that said agencies may determine if their assistance is required.
6. Assist, as requested, in securing specialized personnel or services relative to the property and in handling any ongoing concerns relating to the subject real estate during the pendency of forfeiture proceedings.
- b. The Sheriff’s Legal Advisor will:
 1. Consult with and advise the investigator/detective and his/her supervisor, the Litigation Liaison, and the Sheriff or his designee, on legal issues pertaining to real estate pre-filing investigation, real estate “seizure” and approved forfeiture proceedings.
 2. Represent the Sheriff’s Office in real property forfeiture proceedings filed and handled solely by the Hendry County Sheriff’s Office.
 3. Assist in coordination of real property forfeiture proceedings with appropriate state or federal agencies on behalf of the Hendry County Sheriff’s Office.
 4. Make a recommendation to the Sheriff authorizing or denying “seizure” of real property based on input from the investigator/detective or his/her supervisor.
 5. Insure that all policies, procedures and applicable state laws are adhered to.
 6. Review the legal description of the property to be seized and determine with the assistance and cooperation of the Department of Natural Resources, if applicable, whether the property to be seized is environmentally sensitive or endangered lands, as defined in Florida Statute Section 259.03(2).
 7. Maintain continuing oversight of real estate forfeitures in order to advise Sheriff’s Office command personnel of legal progress, likelihood of case success, propriety of settlements, and similar concerns.
 8. Provide notice of “Pre-Seizure Adversarial Preliminary Hearing,” and schedule the hearings within ten days of the filing of Lis Pendens or as soon as practicable.
- c. The Sheriff will:
 1. Make authorization as to whether to seize real property and proceed with the real property forfeiture after consultation with the Legal Advisor.

2. Authorize expenditure for the maintenance and management of real property pending final disposition.
 3. Approve a plan for the management of real property pending final disposition.
 4. Approve or reject any proposed settlement agreements after consultation with the Legal Advisor.
 5. Keep Chief Deputy informed of any decisions made regarding the process.
5. Pre-Seizure Planning
 - a. Prior to seizing any real property, the investigator/detective will be responsible for determining the ownership of any real property under consideration for forfeiture.
 - b. Prior to seizing any real property, the investigator/detective will be responsible for determining the value of the real property and the equity in the property. The estimated value may be based upon an appraisal or recent market price of the property or of market values of comparable property, which are subject to forfeiture and the amount of income generated by any business, located on the property.
 - c. Prior to seizing any real property, the investigator/detective will attempt to obtain either a letter of commitment to provide title insurance from a title insurance company or an ownership and encumbrance report.
 - d. Prior to seizing any real property, the investigator/detective will determine the amount of any prior existing mortgages, liens and taxes. These amounts will include both the existing balance and any monthly or periodic payments, if any.
 - e. The investigator/detective will compile a proposal for the management of real property, which will be submitted with the recommendation for seizure and forfeiture via the chain of command to the Sheriff or his designee.
6. Budgetary Considerations
 - a. No real property will be seized for forfeiture unless funds are available from existing appropriations for maintenance and management of the property pending final disposition of the forfeiture. The condition and contents of seized property will be documented by photograph and/or video at the time of seizure.
 - b. The investigator/detective will keep a detailed record of all expenditures made for the maintenance and management of real property.
7. Management of Real Property
 - a. Upon seizure, or as soon as practical thereafter, an inventory of the contents of any seized real property will be conducted by the seizing investigator/detective and his/her supervisor.
 - b. The seizing investigator/detective will coordinate the maintenance and management of real property pending final disposition. Contract for special services will be prepared by the seizing investigator/detective. Any necessary repairs that are not part of the regular maintenance service will be brought to the attention of the Legal Advisor. If repairs appear to be excessively costly, approval of the Sheriff will be required before repairs are made.

8. Disposition of Real Property

- a. If at the conclusion of the judicial process, the Sheriff's Office prevails and a judgment of forfeiture is issued, the Sheriff's Office ownership interest in the property should not be considered completed until the time for an appeal is filed. The appeal should be resolved before the Sheriff's Office ownership interest in the property is considered completed.
- b. Once a final judgment of forfeiture has been obtained by the Sheriff's Office and the time for appeals has passed, or appeals have been resolved in favor of the Sheriff's Office, title to real estate will be received in the name: "Hendry County Sheriff's Office."
- c. Real estate forfeited to the Sheriff's Office under the Florida Contraband Forfeiture Act may be retained, utilized, transferred, donated or sold in a manner authorized by the Florida Contraband Forfeiture Act and/or other relevant statutory provisions.
- d. From the proceeds of the sale of any forfeited real property, the following costs will be paid or funds from which payments have been previously made will be reimbursed:
 1. Costs of litigation;
 2. Costs of maintenance and management;
 3. Fees to the Department of Legal Affairs.

9. Federal Forfeitures

- a. The Finance Unit will maintain on file a copy of all federal DAG-71 forms.
- b. Criminal Investigations Supervisor will complete a monthly report to be forwarded to the Chief Deputy identifying all pending cases and status of each respective seizure/forfeiture.
- c. An Equitable Sharing Agreement and Certification Form will be prepared within 60 days after the end of each fiscal year outlining the funds and property received and expended under the Federal Equitable Sharing Program. This documentation will be sent according to the final instructions on the affidavit page of the form.

10. Use of Forfeited Assets

- a. The Chief Deputy will assure the Sheriff's Office compliance with the *Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies* regarding expenditure of federally forfeited assets.
- b. The Chief Deputy in conjunction with the Finance supervisor will assure the Sheriff's Office compliance with the Florida Contraband Forfeiture Act regarding expenditures of federally forfeited assets.

DEFINITIONS

ASSET SEIZURE NOTICE - Notice of forfeiture provided to the potential claimants by the seizing deputy/detective, which advises the claimants of their rights under the Florida Contraband Forfeiture Act.

FLORIDA CONTRABAND FORFEITURE ACT (Florida Statute Sections 932.701-705) – Authorizes law enforcement agencies to seize and forfeit any vessel, motor vehicle, aircraft,

currency or other personal property or contraband article which has been used, is being used, or was intended to be used in violation of its provisions.

FORFEITURE AFFIDAVIT – An affidavit completed by the seizing deputy and approved by his/her immediate supervisor, which is forwarded to the Chief Deputy in order to further the forfeiture proceedings. The affidavit will be styled, "In RE: FORFEITURE OF _____" (followed by the name or description of the property). The affidavit will state a cause of action that would support a final judgment of forfeiture.

LEGAL ADVISOR – The attorney designated by the Sheriff to represent the Sheriff's Office on all civil forfeiture proceedings.

PERSONAL PROPERTY – Described as any article of value, such as currency, jewelry, vessels, aircraft and motor vehicles.

REAL PROPERTY – Buildings and land.

SEIZING DEPUTY/DETECTIVE – The deputy sheriff or detective responsible for processing the forfeiture request (under the direction of his/her immediate supervisor trained in forfeiture proceedings) and who issues the initial notice of forfeiture to the potential claimants.

VERIFIED AFFIDAVIT – A statement given under oath based upon personal knowledge as to the facts contained in the statement.

REFERENCES

State/Federal Regulations:

Florida Statute 253.023

Florida Statute 259.03

Florida Statute 259.032

Florida Statute 893

Florida Statute 932.701 – 932.706

CFA:

CFA Standards 28.01M, 30.01, 30.02M, and 30.03M

Forms:

500.50-01 Forfeiture Notice

Other Policy/ Procedure References:

500.30 Tow/Wreckers, Towing Records, and Impoundment Procedures

500.40 Evidence Collection and Storage